

GAHC010140672023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./628/2023

SANJAY BARMAN @ SANJAY RAY
S/O SRI RAJU RAY
R/O VILL- CHAGALIA PART-II
P.O. CHAGALIA P.S. GOLAKGNAJ
DIST. DHUBRI, ASSAM-783370

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:SMTI. NILOMONI BARMAN
W/O SRI BISHNU BARMAN
R/O VILL- CHAGALIA PART-II
P.O. CHAGALIA

P.S. GOLAKGANJ
DIST. DHUBRI
ASSAM-78337

Advocate for the Petitioner : MRS. K DEVI

Advocate for the Respondent : PP, ASSAM

BEFORE

THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

11.08.2023

1. Heard Mr. R De, learned counsel for the petitioner and Mr. B Gogoi, learned Additional Public Prosecutor for the State.
2. This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 praying for quashing of the proceeding of Charge-sheet No. 549/2022 dated 30.10.2022 arising out of Golakganj P.S. Case No. 219/2022 under Sections 448/376/506 IPC as well as the proceeding in PRC No. 5280/2022 pending in the court of learned Additional Chief Judicial Magistrate, Dhubri.
3. This present petition is filed by the accused person in the aforesaid charge-sheet. Further, this present petition is filed in a background that on 23.05.2022 at about 6.00 pm, the accused/ petitioner illegally entered into the house of respondent No. 2 in absence of her family members and forcefully touched different part of her body while she was sleeping and tried to rape her. It is the further case that the accused petitioner also threatened the victim not to approach the police authority in this regard or else they would dispossess her from her house by demolishing it and driving the family out from the village and kill them.
4. Mr. De, learned counsel for the petitioner argues the followings:
 - I. In the FIR itself, the allegation made is an attempt of rape and medical evidence do not corroborate such attempt as there was no injury.
 - II. The FIR further reflects that there was a meeting of the villagers with the elderly and such reference also do not disclose any rape. Therefore, the FIR itself is an abuse of process of the court.
 - III. A compromise was also entered, whereas there is no mention of any rape and such fact also clarifies that lodging of the FIR is nothing but abuse of the

process of the court inasmuch as the compromise itself reflects that the FIR was lodged out of misunderstanding. Therefore, allowing the trial to be continued will be a futile exercise and abuse of the process of court. Therefore, in term of ratio laid down ***State Of Haryana And Ors vs Ch. Bhajan Lal And Ors*** reported in ***1992 AIR 604, 1990 SCR Supl. (3) 259***, the present FIR under challenge is liable to be quashed.

IV. It is further contention of Mr. De that there is a delay in lodging the FIR. The alleged incident took place on 23.05.2022 and the FIR was lodged on 28.06.2022 i.e. after more than one month from the date of incident. Such action on the part of the victim fortifies that this is an abuse of process of the court and only to malign the petitioner, the FIR has been lodged.

V. Therefore, Mr. De concludes his argument by submitting that the entire facts clearly disclose that this is an after thought.

5. This court while issuing notice, called for the scanned copy of the case diary as well as the record. Perused the same. The FIR which is annexed as Annexure A is quoted hereinbelow:

“It is respectfully submitted that on 23.05.2022 evening around 6 p.m. taking advantage of absence of family members, the accused No. 1 illegally trespassed into my bedroom while I was sleeping thereafter he touched different parts of my body and forcefully tried to rape me. The above incident was reported to elder person of society but could not get justice. The remaining accused person have threatened that in the event the matter is reported to police or file a case, they will evict up from the land by destroying houses and drive out us from village. Such threatening we are receiving for last 9/10 days. It is pertinent to state here that they also gave threat to our life.

Therefore, it is prayed before your honour to take investigation and action in

accordance with law.”

6. The compromise upon of which, Mr. De has given much emphasis is also quoted hereinbelow:

“It is respectfully submitted that 24.05.2022 Tuesday two cross complaint were filed by us as first party Nilomoni Barma, W/O Bishnu Barman village Chagolia Pt II and 2nd party namely Befula Roy W/O Sanjay Roy village Chagalia Pt II. But today in presence of village elders and members of Panchayat we realized out misunderstanding and decided to withdraw our complaints by signing this mutual settlement.

It is therefore prayed before your honour to investigate and close the complaints.”

7. Also perused the case diary, wherein the statements of the witnesses were recorded. Some witnesses stated before the police that the victim and the family were compelled to sign the compromise under threat. Further, reading of the FIR as a whole makes out a prima-facie case.
8. In the case in hand, perusal of the FIR itself makes out a case and the investigating authority on the basis of material collected has also filed charge-sheet. One of the witnesses as discussed hereinabove has also stated in his statement recorded under Section 161 Cr.P.C. that the compromise was entered under threat.
9. Considering all above, this court is of the unhesitant opinion that this is not a fit case, where this Court should exercise its inherent power under Section 482 of Cr.P.C. to quash the entire proceeding of Charge-sheet No. 549/2022 dated 30.10.2022 arising out of Golakganj P.S. Case No. 219/2022 under Sections 448/376/506 IPC as well as the proceeding in PRC No. 5280/2022 pending in

the court of learned Additional Chief Judicial Magistrate, Dhubri.

10. Accordingly, this petition stands dismissed. Case Diary be returned back.

JUDGE

Comparing Assistant